

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

LAND APPEAL NO. 47 OF 2019

*(Arising from the Ruling of the District Land and Housing Tribunal for Tarime at Tarime (Hon. Mayeye, S.M.- Chairman) in Misc. Application No. 219 of 2018)*

**JULITHA OKEYO (Adminitratrix  
of Estates of The Late Silvester Okeyo)..... APPELLANT**  
**VERSUS**  
**ALFAYO AMWAGO ..... RESPONDENT**

JUDGEMENT

*11<sup>th</sup> August and 4<sup>th</sup> September, 2020*

**KISANYA, J.:**

This is an appeal against the ruling of the District Land and Housing Tribunal for Tarime at Tarime in Miscl. Application No. 219 of 2018 dismissing the applicant's application for setting aside dismissal order in respect of Application No.54 of 2018. Following that decision and upon securing leave within which to appeal out of time, the appellant has filed the present appeal.

The facts leading to this appeal are as follows: On 24<sup>th</sup> April, 2018, the appellant, Adminitratrix of the estates of the late **Silvester Okeyo** sued the respondent, **Alfayo Okeyo** on a claim for recovery of land located at Tatwe Village, Goribe Ward in Tarime District. The said suit (Application No. 54 of 2018) was dismissed for want of prosecution on 24<sup>th</sup> August, 2020.

Following that decision, the appellant applied for setting aside the dismissal order. Her reasons was to the effect that, the bus she boarded on the date of

hearing (24/08/2018) had breakdown. The Tribunal dismissed the application on the ground that, the appellant did not account for her failure to appear on 18/06/2108 and 23/07/2018. Aggrieved, the appellant has filed the appeal at hand. At first, she had advanced three ground of appeal. However, her counsel dropped one ground. The remained grounds are as follows:

- 1. That, the trial tribunal erred in law and in fact for dismissing Misc Application No. 2019 of 2018 on 24/08/2018 for lack of sufficient reasons specifically on the other two mention dates namely 18/6/2018 and 23/7/2018.*
- 2. That, the trial tribunal erred in law and in fact for dismissing Misc. Application No. 218 of 2018 on 24/08/2018 while the applicant had sufficient reasons as on 24/8/2018 the bus namely Sharkey Express got breakdown on the way to Tarime.*

When this matter was placed before me for hearing, the appellant was represented by Mr. Ostack Mligo, learned advocate. On his part, the respondent enjoyed the legal services of Mr. Amos Wilson, learned advocate.

I had time to examine closely Miscl. Application No. 219 of 2018 on application for setting aside dismissal order and Application No.54 of 2018 which was dismissed for want of prosecution. Having gone through the records and the submissions carefully, the issue for consideration is whether or not the appeal is meritorious.

It is not disputed that the suit for recovery land (Application No.54 of 2018) filed before the Tribunal was dismissed for want of prosecution. However, the dismissal order dated, 24<sup>th</sup> August, 2018 did not specify the provision under which it was made.

As rightly argued by Mr. Wilson, proceedings of the District Land and Housing Tribunal are governed by the Land Disputes Courts (the District Land and

Housing Tribunal) Regulations, 2003 (hereinafter referred to as “the Regulations”. But, pursuant to section 51(2) of the Land Disputes Courts Act, Cap. 216, R.E 2019, the provisions of the Civil Procedure Code, Cap. 33, R.E. 2019 applies where the matter is not covered thereto.

Now, the procedure related to non-appearance of the applicant or respondent on the date fixed for hearing is provided for under reg. 11 of the above cited Regulations. The Tribunal has power to dismiss the application due non-appearance of the applicant under reg. 11(1) of the Regulations which reads:

*“On the day the application is fixed for hearing the Tribunal shall-*

*(a) ...*

*(b) Where the applicant is absent without good cause, and had received notice of hearing or was present when the hearing date was fixed, dismiss the application for non-appearance of the applicant.” [Emphasize supplied]*

In my view, the above provision sets the conditions under which the application can be dismissed due non-appearance of the applicant. It must be proved that, applicant is absent without good cause and that, he/she received notice of hearing or was present when the hearing date was fixed. If any of the said conditions is not met, the application before the Tribunal cannot be dismissed for non-appearance of the applicant under reg. 11(1) of the Regulations.

It is on record that, the application (suit) subject to this appeal was dismissed for want of prosecution on 24<sup>th</sup> August, 2018. Further, the appellant (the then applicant) was absent without giving reason. Thus, the first condition was met. However, the application was not scheduled for hearing on 24<sup>th</sup> August, 2018. The record shows that, it had been fixed for mention. Therefore, the application

could not be dismissed for want of prosecution under reg. 11(1) of the Regulations as the second condition was not met.

Mr. Wilson was of the considered view that, the application was dismissed under reg. 15 of the Regulations on the account that, it had been left unattended by the applicant for three months consecutively. Indeed, reading from the ruling on application for setting aside the dismissal order, I am in agreement with Mr. Wilson that, the application was dismissed for want of prosecution under reg. 15 of the Regulations. This is because the Tribunal held that appellant “was absent for three mention dates consecutively without notice of absence” and that, she had failed to account for her failure to appear on 18/06/2018 and 23/07/2018. The next question then is whether the Tribunal was justified in dismissing the application for setting aside the dismissal order.

Mr. Mligo argued that, the appellant advanced good cause for her failure to appeal on 24/08/2018 as breakdown of the bus she boarded on her way to attend the hearing. He went on to submit that, the Tribunal was not supposed to consider previous conduct of the appellant. On his part, Mr. Wilson was of the firm view that, the appellant was duty bound to account for failure to appear on all days the application was called on before the Tribunal.

At this juncture, I find pertinent to reproduce reg. 15 of the Regulations which was cited by the Tribunal in dismissing the application for setting aside the dismissal order. This regulation reads as follows:

*“The Tribunal may, where an application is left unattended by an applicant for a period of three months-*

- (a) Dismiss the application for want of prosecution; or*
- (b) N/A”*

Reading from the above cited provision, I find that the application (suit) can be dismissed when it is not attended by the applicant for a period of three months. It is my considered opinion, the period of three months starts to run against the applicant from the date he/she is required to appear before the Tribunal for the first time. If upon filing the application, the applicant is not served to appear, he/she cannot be condemned to have left it unattended. Further, if the applicant does not appear on the date fixed for hearing after appearing before the Tribunal, the provision of reg. 11(2) of the Regulations applies.

It is on record that, the applicant filed the application on 24/4/2018. The trial Chairman issued the initial orders by fixing the application for orders on 18/6/2018. The Tribunal went on to order the applicant and the respondent to be served accordingly. In that regard, the time started to run against the appellant on 18/6/2018 when she was supposed to appear before the Tribunal for the first time. She then failed to appear on 23/7/2018 and 24/8/2018 when the application was dismissed for want of prosecution. It is apparent that, three months had not lapsed from 18/6/2018, when the applicant was required to appear before the Tribunal to 24/08/2018, when the application was dismissed for want of prosecution. Therefore, I find that it was premature for the Tribunal to dismiss the application under reg. 15 of the Regulations because three months had not lapsed.

Furthermore, even if it is considered that three months had lapsed, it is on record that, the appellant advanced the reasons for her failure to appear on 24/08/2018 when the application was called on for mention as breakdown of the bus. The Tribunal was satisfied with that reason. However, it went to dismiss the application on the ground that, the previous days (18/6/2018 and 23/7/2018) were not accounted for. I am in agreement with Mr. Mligo that, since the

applicant accounted for her failure to appear on 24/8/2018, it cannot be said the application was left unattended for three months. Much as there was good cause for failure to appear on 24/08/2018, the Tribunal ought to have set aside the dismissal order.

For the foregoing reasons, the appeal is held to be meritorious and stands allowed. Consequently, the Court hereby orders as follows:

1. The District Land and Housing Tribunal's ruling in Miscl. Application No. 219 of 2018 and dismissal order in Application No.54 of 2018 are quashed and set aside.
2. Application No.54 of 2018 is restored. The case file shall be remitted to the trial Tribunal to proceed where it ended before the dismissal order.
3. Each party to bear own costs.


Dated at MUSOMA this 4<sup>th</sup> day of September, 2020.



  
E. S. Kisanya  
JUDGE

**Court:** Judgment delivered in Chambers this 4<sup>th</sup> day of September, 2020 in the presence of Mr. Ostack Mligo, learned advocate for appellant and holding brief for Mr. Amos Wilson, learned advocate for the respondent. B/C, M. Kimweri-RMA present.



  
E. S. Kisanya  
JUDGE  
04/09/2020